

# **FEDERAL DEPOSIT INSURANCE CORPORATION**

## **FOIA ANNUAL REPORT**

**Fiscal Year 1998 (October 1, 1997-- September 30, 1998)**

### **I. Basic Information Regarding Report**

- A. Name, title, address, and telephone number of person(s) to be contacted with questions about the report:

**Fredrick Lee Fisch**

**Senior Attorney (FOIA/Privacy Officer)**

**Office of the Executive Secretary**

**550 17<sup>th</sup> St. N.W., Room F-4040**

**Washington, D.C. 20429**

**(202) 898-3819**

- B. Electronic address for report on the World Wide Web:

[www.fdic.gov/publish/efoia/index.html](http://www.fdic.gov/publish/efoia/index.html)

- C. How to obtain a copy of the report in paper form:

**Federal Deposit Insurance Corporation (FDIC)**

**Office of the Executive Secretary**

**550 17<sup>th</sup> St. N.W.**

**Washington, D.C. 20429**

**Or download from the web site at [www.fdic.gov/publish/efoia/index.html](http://www.fdic.gov/publish/efoia/index.html).**

### **II. How to Make a FOIA Request**

**The following is the link to the FDIC's FOIA Guide:**

<http://www.fdic.gov/publish/foiahbk/index.html>

**Requests may be made via facsimile to (202) 898-8778, via e-mail through the web site or to [efoia@fdic.gov](mailto:efoia@fdic.gov), or in writing to the address in Section 1(C) above.**

A. Names, addresses and telephone numbers of all individual agency components and offices that receive FOIA requests.

**All requests are routed through and processed by the FDIC's Office of the Executive**

**Secretary, located at the address listed in Section 1 C of this report.**

B. Brief description of the agency's response-time ranges.

**Response times are from 1 day up to greater than twelve months in rare cases.**

C. Brief description of why some requests are not granted.

**Requests are denied or partially denied primarily under FOIA exemptions (b)(4),(b)(5), (b)(6) and (b)(8). Because the FDIC is a federal financial institution regulatory agency as well as the appointed receiver of virtually all failed financial institutions in the U.S., we receive much privileged or private financial information concerning individuals, banking and business entities. Therefore, exemptions (b)(4) and (b)(6) are used frequently to withhold this exempt material. Other exemptions are used less frequently, and records sometimes cannot be located.**

### III. Definitions of Terms and Acronyms Used in the Report (to be included in each report)

A. Agency-specific acronyms or other terms.

**None.**

B. Basic terms, expressed in common terminology.

**1. FOIA/PA request -- Freedom of Information Act/Privacy Act request. A FOIA request is generally a request for access to records concerning a third party, an organization, or a particular topic of interest. A Privacy Act request is a request for records concerning oneself; such requests are also treated as FOIA requests. (All requests for access to records, regardless of which law is cited by the requester, are included in this report.)**

**2. Initial Request -- a request to a federal agency for access to records under the Freedom of Information Act.**

**3. Appeal -- a request to a federal agency asking that it review at a higher administrative level a full denial or partial denial of access to records under the Freedom of Information Act, or any other FOIA determination such as a matter pertaining to fees.**

**4. Processed Request or Appeal -- a request or appeal for which an agency has taken a final action on the request or the appeal in all respects.**

**5. Multi-track processing -- a system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests in each track are processed on a first-in/first out basis. A requester who has an urgent need for records may request expedited processing (see below).**

**6. Expedited processing -- an agency will process a FOIA request on an expedited basis**

when a requester has shown an exceptional need or urgency for the records which warrants prioritization of his or her request over other requests that were made earlier.

7. Simple request -- a FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the volume and/or simplicity of records requested.

8. Complex request -- a FOIA request that an agency using multi-track processing places in a slower track based on the volume and/or complexity of records requested.

9. Grant -- an agency decision to disclose all records in full in response to a FOIA request.

10. Partial grant -- an agency decision to disclose a record in part in response to a FOIA request, deleting information determined to be exempt under one or more of the FOIA's exemptions; or a decision to disclose some records in their entireties, but to withhold others in whole or in part.

11. Denial -- an agency decision not to release any part of a record or records in response to a FOIA request because all the information in the requested records is determined by the agency to be exempt under one or more of the FOIA's exemptions, or for some procedural reason (such as because no record is located in response to a FOIA request).

12. Time limits -- the time period in the Freedom of Information Act for an agency to respond to a FOIA request (ordinarily 20 working days from proper receipt of a "perfected" FOIA request).

13. "Perfected" request -- a FOIA request for records which adequately describes the records sought, which has been received by the FOIA office of the agency or agency component in possession of the records, and for which there is no remaining question about the payment of applicable fees.

14. Exemption 3 statute -- a separate federal statute prohibiting the disclosure of a certain type of information and authorizing its withholding under FOIA subsection (b)(3).

15. Median number -- the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.

16. Average number -- the number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group. For example, of 3, 7, and 14, the average number is 8.

#### IV. Exemption 3 Statutes

A. List of Exemption 3 statutes relied on by agency during current fiscal year.

**The FDIC did not use Exemption (b)(3) during this fiscal year.**

## V. Initial FOIA/PA Access Requests

### A. Numbers of initial requests.

(the total of the numbers in Lines 1 and 2, minus the number in Line 3, should equal the number in Line 4)

1. Number of requests pending as of end of preceding fiscal year: **164**
2. Number of requests received during current fiscal year: **844**
3. Number of requests processed during current fiscal year: **858**
4. Number of requests pending as of end of current fiscal year: **150**

### B. Disposition of initial requests.

1. Number of total grants: **469**
2. Number of partial grants: **163**
3. Number of denials: **37**
- (a) the number of times each FOIA exemption used (counting each exemption once per request)
  - (1) Exemption 1: **0**
  - (2) Exemption 2: **6**
  - (3) Exemption 3: **0**
  - (4) Exemption 4: **118**
  - (5) Exemption 5: **93**
  - (6) Exemption 6: **127**
  - (7) Exemption 7(A): **11**
  - (8) Exemption 7(B): **0**
  - (9) Exemption 7(C): **25**
  - (10) Exemption 7(D): **1**
  - (11) Exemption 7(E): **0**
  - (12) Exemption 7(F): **0**

(13) Exemption 8: **50**

(14) Exemption 9: **0**

4. Other reasons for nondisclosure  
total: **523**

(a) no records: **195**

(b) referrals: **60**

(c) request withdrawn: **189**

(d) fee-related reason: **77**

(e) records not reasonably described: **2**

(f) not a proper FOIA request for some other reason: **0**

(g) not an agency record: **0**

(h) duplicate request: **0**

(i) other (specify): **0**

## VI. Appeals of Initial Denials of FOIA/PA Requests

### A. Numbers of appeals.

1. Number of appeals received during fiscal year: **58**

2. Number of appeals processed during fiscal year: **69<sup>1</sup>**

### B. Disposition of appeals.

1. Number completely upheld: **20**

2. Number partially reversed: **21**

3. Number completely reversed: **16**

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<sup>1</sup> This includes several appeals received before but processed during the reporting period.

(a) number of times each FOIA exemption was used (counting each exemption once per appeal)

(1) Exemption 1: **0**

(2) Exemption 2: **0**

(3) Exemption 3: **0**

(4) Exemption 4: **17**

(5) Exemption 5: **22**

(6) Exemption 6: **21**

(7) Exemption 7(A): **1**

(8) Exemption 7(B): **0**

(9) Exemption 7(C): **5**

(10) Exemption 7(D): **0**

(11) Exemption 7(E): **0**

(12) Exemption 7(F): **0**

(13) Exemption 8: **8**

(14) Exemption 9: **0**

4. Other reasons for nondisclosure (total): **21**

(a) no records: **9**

(b) referrals: **0**

(c) request withdrawn: **12**

(d) fee-related reason: **0**

(e) records not reasonably described: **0**

(f) not a proper FOIA request for some other reason: **0**

(g) not an agency record: **0**

(h) duplicate request: **0**

(i) other (specify): **0**

## VII. Compliance with Time Limits/Status of Pending Requests

### A. Median processing time for requests processed during the year.

#### 1. Simple Requests:

(a) number of requests processed: **858**

(b) median number of days to process: **40 calendar days**

#### 2. Complex requests (specify for any and all tracks used).

**The FDIC's FOIA regulations do not differentiate between simple and complex FOIA requests. They do, however, differentiate among fast-track, normal processing and expedited processing (when asked for by news media or a party whose health or physical safety is in danger) of requests. Accordingly, many of the requests encompassed in Section VII A 1 above are requests that are voluminous or complex.**

#### 3. Requests accorded expedited processing.

**The FDIC's regulation calling for expedited FOIA request processing became effective on May 04, 1998. Accordingly, only 5 months of this fiscal year would include the implementation of the new regulation. During that time interval, the FDIC did not receive any requests for expedited processing. After the reporting period, the FDIC has received and processed several such requests, the details of which will appear in next year's Annual FOIA Report.**

### B. Status of pending requests.

1. Number of requests pending as of end of current fiscal year: **150**

2. Median number of days that such requests were pending as of that date: **50 calendar days**

## VIII. Comparisons with Previous Year(s) (Optional)

A, B, & C. -- **These comparisons do not correlate with the prior year's annual report data because of the abbreviated fiscal year from the prior annual report (1/01/97 to 9/30/97)**

### D. Other statistics significant to agency:

**Open FOIA/PA requests were reduced from 164 at the beginning of the fiscal year, to 150 at the end of the fiscal year, and requests more than six months old were reduced by 33%, from 27 to 18. Requests greater than six months old have had a steady decline at the FDIC since January 1996, when the FDIC experienced a high of 294 such requests (many of these came from the Resolution Trust Corporation, which sunset on 12/31/95 and whose operations were assumed by the FDIC), down to 18 such requests at the end of this**

**reporting period. Due to the general decline in the number of FOIA requests at the FDIC during the past two years, FOIA/Privacy Act headquarters staff has been reduced by three, full-time employees during this reporting period.**

E. Other narrative statements describing agency efforts to improve timeliness of FOIA performance and to make records available to the public (e.g., backlog-reduction efforts; specification of average number of hours per processed request; training activities; public availability of new categories of records)

**Detailed quarterly analyses of outstanding and closed FOIA requests are undertaken by the Senior Attorney in charge of the FOIA/PA program. The results of these analyses are disseminated among top management of the FDIC in order for them to track the progress of processing FOIA requests within the various components of the agency.**

**The number of requests received on the FDIC's web site has increased steadily, and the FDIC has posted a great deal of information directly on the web site, such as records concerning Y2K readiness, FDIC enforcement actions, and information concerning FDIC member banks. The on-line agency FOIA Guide also helps requesters to better target their requests and includes links to the FDIC's FOIA regulation, the Justice Department's Guide to the FOIA, and popular FOIA records.**

**During this fiscal year, the FDIC conducted two formal training sessions on the FOIA and the Privacy Act for agency employees who work on these issues. Each training session was 1/2 day in duration and included an audience of 45 - 55 FDIC employees.**

**The FOIA/Privacy Act program has also been selected within the FDIC to be the pilot for the FDIC's Knowledge Management (KM) Program. The KM program will assist the FDIC in creating, maintaining, and archiving agency records in electronic formats, and should lead to increased efficiency in the operation of the FDIC's FOIA/Privacy Act program. The KM pilot program is currently in the design stage but is scheduled for a partial implementation during calendar year 1999.**

## **IX. Costs/FOIA Staffing**

### **A. Staffing levels.**

- 1. Number of full-time FOIA personnel: 10 (this is a composite average of full time staff; the number has changed during the reporting period)**
- 2. Number of personnel with part-time or occasional FOIA duties (in total work-years): 8.4**

**Total number of personnel (in work-years): 18.4<sup>2</sup>**

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<sup>2</sup> This does not include staff at the FDIC's Reading Room/Public Information Center



B. Total costs (including staff and all resources).

1. FOIA processing (including appeals): **\$1,375,000.00**
2. Litigation-related activities (estimated): **\$56,900.00**
3. Total costs: **\$1,431,900.00**

C. Statement of additional resources needed for FOIA compliance (optional): **imaging, scanning and other hardware and software that can increase the efficiency of certain operations, such as redaction of voluminous records. The implementation of such new technologies is currently in process at the FDIC under the auspices of the aforementioned Knowledge Management Program.**

#### X. Fees

This includes charges for search, review, document duplication, and any other direct costs permitted under agency regulations.

- A. Total amount of fees collected by agency for processing requests: **\$22,743<sup>3</sup>**
- B. Percentage of total costs: **1.59%**

#### XI. FOIA Regulations (Including Fee Schedule):

The following is the FDIC's FOIA Regulation, with an electronic version available to the public at: <http://www.fdic.gov/lawsregs/rules/2000-7.html#2000>

##### **§ 309.4 Publicly available records.**

(a) Records available on the FDIC's World Wide Web page--

(1) Discretionary release of documents. The FDIC encourages the public to explore the wealth of resources available on the FDIC's World Wide Web page, located at: <http://www.fdic.gov>. The FDIC has elected to publish a broad range of materials on its World Wide Web page, including consumer guides; financial and statistical information of interest to the banking industry; and information concerning the FDIC's responsibilities and structure.

(2) Documents required to be made available via computer telecommunications.

(i) The following types of documents created on or after November 1, 1996, and required to be made available through computer telecommunications, may be found on the FDIC's World

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<sup>3</sup> This does not include fees collected from the Reading Room/Public Information Center in the amount of \$86,871.50, because those fees are not generated pursuant to requests for records under the FOIA.

Wide Web page located at: <http://www.fdic.gov>:

(A) Final opinions, including concurring and dissenting opinions, as well as final orders and written agreements, made in the adjudication of cases;

(B) Statements of policy and interpretations adopted by the Board of Directors that are not published in the Federal Register;

(C) Administrative staff manuals and instructions to staff that affect the public;

(D) Copies of all records released to any person under § 309.5 that, because of the nature of their subject matter, the FDIC has determined are likely to be the subject of subsequent requests;

(E) A general index of the records referred to in paragraph (a)(2)(i)(D) of this section.

(ii) To the extent permitted by law, the FDIC may delete identifying details when it makes available or publishes a final opinion, final order, statement of policy, interpretation or staff manual or instruction. If redaction is necessary, the FDIC will, to the extent technically feasible, indicate the amount of material deleted at the place in the record where such deletion is made unless that indication in and of itself will jeopardize the purpose for the redaction.

(b) Public Information Center. The FDIC maintains a Public Information Center or "PIC" that contains Corporate records that the Freedom of Information Act requires be made available for regular inspection and copying, as well as any records or information the FDIC, in its discretion, has regularly made available to the public. The PIC has extensive materials of interest to the public, including many Reports, Summaries and Manuals used or published by the Corporation that are available for inspection and copying. The PIC is open from 9:00 AM to 5:00 PM, Monday through Friday, excepting federal holidays. It is located at 801 17th Street, N.W., Washington, D.C. 20006. The PIC may be reached during business hours by calling (800) 276-6003.

(b) Applicable fees.

(i) If applicable, fees for furnishing records under this section are as set forth in § 309.5(f) except that all categories of requesters shall be charged duplication costs.

(ii) Information on the FDIC's World Wide Web page is available to the public without charge. If, however, information available on the FDIC's World Wide Web page is provided pursuant to a Freedom of Information Act request processed under § 309.5, then fees apply and will be assessed pursuant to § 309.5(f).

[Codified to 12 C.F.R. § 309.4] [Section 309.4 amended at 63 Fed. Reg. 16404, April 3, 1998, effective May 4, 1998]

### **§ 309.5 Procedures for requesting records.**

(a) Definitions. For purposes of this section:

(1) Commercial use request means a request from or on behalf of a requester who seeks

records for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a request falls within this category, the FDIC will determine the use to which a requester will put the records requested and seek additional information as it deems necessary.

(2) Direct costs means those expenditures the FDIC actually incurs in searching for, duplicating, and, in the case of commercial requesters, reviewing records in response to a request for records.

(3) Duplication means the process of making a copy of a record necessary to respond to a request for records or for inspection of original records that contain exempt material or that cannot otherwise be directly inspected. Such copies can take the form of paper copy, microfilm, audiovisual records, or machine readable records (e.g., magnetic tape or computer disk).

(4) Educational institution means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(5) Noncommercial scientific institution means an institution that is not operated on a commercial basis as that term is defined in paragraph (a)(1) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(6) Representative of the news media means any person primarily engaged in gathering news for, or a free-lance journalist who can demonstrate a reasonable expectation of having his or her work product published or broadcast by, an entity that is organized and operated to publish or broadcast news to the public. The term news means information that is about current events or that would be of current interest to the general public.

(7) Review means the process of examining records located in response to a request for records to determine whether any portion of any record is permitted to be withheld as exempt information. It includes processing any record for disclosure, e.g., doing all that is necessary to excise them or otherwise prepare them for release.

(8) Search includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within records. Searches may be done manually and/or by computer using existing programming.

(c) Making a request for records.

(1) The request shall be submitted in writing to the Office of the Executive Secretary:

(i) By completing the online request form located on the FDIC's World Wide Web page, found at: <http://www.fdic.gov>;

(ii) By facsimile clearly marked Freedom of Information Act Request to (202) 898-8778; or

(iii) By sending a letter to the Office of the Executive Secretary, ATTN: FOIA/PA Unit, 550 17th Street, N.W., Washington, D.C. 20429.

(2) The request shall contain the following information:

(i) The name and address of the requester, an electronic mail address, if available, and the telephone number at which the requester may be reached during normal business hours;

(ii) Whether the requester is an educational institution, noncommercial scientific institution, or news media representative;

(iii) A statement agreeing to pay the applicable fees, or a statement identifying a maximum fee that is acceptable to the requester, or a request for a waiver or reduction of fees that satisfies paragraph (f)(1)(x) of this section; and

(iv) The preferred form and format of any responsive information requested, if other than paper copies.

(3) A request for identifiable records shall reasonably describe the records in a way that enables the FDIC's staff to identify and produce the records with reasonable effort and without unduly burdening or significantly interfering with any of the FDIC's operations.

(c) Defective requests. The FDIC need not accept or process a request that does not reasonably describe the records requested or that does not otherwise comply with the requirements of this part. The FDIC may return a defective request, specifying the deficiency. The requester may submit a corrected request, which will be treated as a new request.

(d) *Processing requests.*--(1) Receipt of requests. Upon receipt of any request that satisfies paragraph (b) of this section, the FOIA/PA Unit, Office of the Executive Secretary, shall assign the request to the appropriate processing track pursuant to this section. The date of receipt for any request, including one that is addressed incorrectly or that is referred by another agency, is the date the Office of the Executive Secretary actually receives the request.

(2) Multitrack processing. (i) The FDIC provides different levels of processing for categories of requests under this part. Requests for records that are readily identifiable by the Office of the Executive Secretary and that have already been cleared for public release may qualify for fast-track processing. All other requests shall be handled under normal processing procedures, unless expedited processing has been granted pursuant to paragraph (d)(3) of this section. (ii) The FDIC will make the determination whether a request qualifies for fast-track processing. A requester may contact the FOIA/PA Unit to learn whether a particular request has been assigned to fast-track processing. If the request has not qualified for fast-track processing, the requester will be given an opportunity to refine the request in order to qualify for fast-track processing. Changes made to requests to obtain faster processing must be in writing.

(3) Expedited processing. (i) Where a person requesting expedited access to records has demonstrated a compelling need for the records, or where the FDIC has determined to expedite the response, the FDIC shall process the request as soon as practicable. To show a compelling

need for expedited processing, the requester shall provide a statement demonstrating that: (A) The failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or (B) The requester can establish that they are primarily engaged in information dissemination as their main professional occupation or activity, and there is urgency to inform the public of the government activity involved in the request; and (C) The requester's statement must be certified to be true and correct to the best of the person's knowledge and belief and explain in detail the basis for requesting expedited processing. (ii) The formality of the certification required to obtain expedited treatment may be waived by the FDIC as a matter of administrative discretion.

(4) A requester seeking expedited processing will be notified whether expedited processing has been granted within ten (10) working days of the receipt of the request. If the request for expedited processing is denied, the requester may file an appeal pursuant to the procedures set forth in paragraph (h) of this section, and the FDIC shall respond to the appeal within ten (10) working days after receipt of the appeal.

(5) Priority of responses. Consistent with sound administrative process the FDIC processes requests in the order they are received in the separate processing tracks. However, in the agency's discretion, or upon a court order in a matter to which the FDIC is a party, a particular request may be processed out of turn.

(6) Notification.

(i) The time for response to requests will be twenty (20) working days except: (A) In the case of expedited treatment under paragraph (d)(3) of this section; (B) Where the running of such time is suspended for the calculation of a cost estimate for the requester if the FDIC determines that the processing of the request may exceed the requester's maximum fee provision or if the charges are likely to exceed \$250 as provided for in paragraph (f)(1)(v) of this section; (C) Where the running of such time is suspended for the payment of fees pursuant to the paragraphs (d)(6)(i)(B) and (f)(1) of this section; or (D) In unusual circumstances, as defined in 5 U.S.C. 552(a)(6)(B) and further described in paragraph (d)(6)(iii) of this section.

(ii) In unusual circumstances as referred to in paragraph (d)(6)(i)(D) of this section, the time limit may be extended for a period of: (A) Ten (10) working days as provided by written notice to the requester, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched; or (B) Such alternative time period as agreed to by the requester or as reasonably determined by the FDIC when the FDIC notifies the requester that the request cannot be processed in the specified time limit.

(iii) Unusual circumstances may arise when: (A) The records are in facilities, such as field offices or storage centers, that are not located at the FDIC's Washington office; (B) The records requested are voluminous or are not in close proximity to one another; or (C) There is a need to consult with another agency or among two or more components of the FDIC having a substantial interest in the determination.

(7) Response to request. In response to a request that satisfies the requirements of paragraph

(b) of this section, a search shall be conducted of records maintained by the FDIC in existence on the date of receipt of the request, and a review made of any responsive information located. The FDIC shall notify the requester of:

(i) The FDIC's determination of the request;

(ii) The reasons for the determination;

(iii) If the response is a denial of an initial request or if any information is withheld, the FDIC will advise the requester in writing: (A) If the denial is in part or in whole; (B) The name and title of each person responsible for the denial (when other than the person signing the notification); (C) The exemptions relied on for the denial; and (D) The right of the requester to appeal the denial to the FDIC's General Counsel within 30 business days following receipt of the notification, as specified in paragraph (h) of this section.

(e) *Providing responsive records.* (1) Copies of requested records shall be sent to the requester by regular U.S. mail to the address indicated in the request, unless the requester elects to take delivery of the documents at the FDIC or makes other acceptable arrangements, or the FDIC deems it appropriate to send the documents by another means.

(2) The FDIC shall provide a copy of the record in any form or format requested if the record is readily reproducible by the FDIC in that form or format, but the FDIC need not provide more than one copy of any record to a requester.

(3) By arrangement with the requester, the FDIC may elect to send the responsive records electronically if a substantial portion of the request is in electronic format. If the information requested is made pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, it will not be sent by electronic means unless reasonable security measures can be provided.

(f) *Fees*--(1) General rules. (i) Persons requesting records of the FDIC shall be charged for the direct costs of search, duplication, and review as set forth in paragraphs (f)(2) and (f)(3) of this section, unless such costs are less than the FDIC's cost of processing the requester's remittance.

(ii) Requesters will be charged for search and review costs even if responsive records are not located or, if located, are determined to be exempt from disclosure.

(iii) Multiple requests seeking similar or related records from the same requester or group of requesters will be aggregated for the purposes of this section.

(iv) If the FDIC determines that the estimated costs of search, duplication, or review of requested records will exceed the dollar amount specified in the request, or if no dollar amount is specified, the FDIC will advise the requester of the estimated costs (if greater than the FDIC's cost of processing the requester's remittance). The requester must agree in writing to pay the costs of search, duplication, and review prior to the FDIC initiating any records search.

(v) If the FDIC estimates that its search, duplication, and review costs will exceed \$250.00, the requester must pay an amount equal to 20 percent of the estimated costs prior to the FDIC initiating any records search.

(vi) The FDIC shall ordinarily collect all applicable fees under the final invoice before releasing copies of requested records to the requester.

(vii) The FDIC may require any requester who has previously failed to pay the charges under this section within 30 calendar days of mailing of the invoice to pay in advance the total estimated costs of search, duplication, and review. The FDIC may also require a requester who has any charges outstanding in excess of 30 calendar days following mailing of the invoice to pay the full amount due, or demonstrate that the fee has been paid in full, prior to the FDIC initiating any additional records search.

(viii) The FDIC may begin assessing interest charges on unpaid bills on the 31st day following the day on which the invoice was sent. Interest will be at the rate prescribed in section 3717 of title 31 of the United States Code and will accrue from the date of the invoice.

(ix) The time limit for the FDIC to respond to a request will not begin to run until the FDIC has received the requester's written agreement under paragraph (f)(1)(iv) of this section, and advance payment under paragraph (f)(1)(v) or (vii) of this section, or payment of outstanding charges under paragraph (f)(1)(vii) or (viii) of this section.

(x) As part of the initial request, a requester may ask that the FDIC waive or reduce fees if disclosure of the records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Determinations as to a waiver or reduction of fees will be made by the Executive Secretary (or designee) and the requester will be notified in writing of his/her determination. A determination not to grant a request for a waiver or reduction of fees under this paragraph may be appealed to the FDIC's General Counsel (or designee) pursuant to the procedure set forth in paragraph (h) of this section.

(2) Chargeable fees by category of requester. (i) Commercial use requesters shall be charged search, duplication and review costs.

(ii) Educational institutions, non-commercial scientific institutions and news media representatives shall be charged duplication costs, except for the first 100 pages.

(iii) Requesters not described in paragraph (f)(2)(i) or (ii) of this section shall be charged the full reasonable direct cost of search and duplication, except for the first two hours of search time and first 100 pages of duplication.

(3) Fee schedule. The dollar amount of fees which the FDIC may charge to records requesters will be established by the Chief Financial Officer of the FDIC (or designee). The FDIC may charge fees that recoup the full allowable direct costs it incurs. Fees are subject to change as costs change.

(i) Manual searches for records. The FDIC will charge for manual searches for records at the basic rate of pay of the employee making the search plus 16 percent to cover employee benefit costs. Where a single class of personnel (e.g., all clerical, all professional, or all executive) is used exclusively, the FDIC, at its discretion, may establish and charge an average rate for the

range of grades typically involved.

(ii) Computer searches for records. The fee for searches of computerized records is the actual direct cost of the search, including computer time, computer runs, and the operator's time apportioned to the search. The fee for a computer printout is the actual cost. The fees for computer supplies are the actual costs. The FDIC may, at its discretion, establish and charge a fee for computer searches based upon a reasonable FDIC-wide average rate for central processing unit operating costs and the operator's basic rate of pay plus 16 percent to cover employee benefit costs.

(iii) Duplication of records. (A) The per-page fee for paper copy reproduction of documents is the average FDIC-wide cost based upon the reasonable direct costs of making such copies.

(B) For other methods of reproduction or duplication, the FDIC will charge the actual direct costs of reproducing or duplicating the documents.

(iv) Review of records. The FDIC will charge commercial use requesters for the review of records at the time of processing the initial request to determine whether they are exempt from mandatory disclosure at the basic rate of pay of the employee making the search plus 16 percent to cover employee benefit costs. Where a single class of personnel (e.g., all clerical, all professional, or all executive) is used exclusively, the FDIC, at its discretion, may establish and charge an average rate for the range of grades typically involved. The FDIC will not charge at the administrative appeal level for review of an exemption already applied. When records or portions of records are withheld in full under an exemption which is subsequently determined not to apply, the FDIC may charge for a subsequent review to determine the applicability of other exemptions not previously considered.

(v) Other services. Complying with requests for special services, other than a readily produced electronic form or format, is at the FDIC's discretion. The FDIC may recover the full costs of providing such services to the requester.

(4) Publication of fee schedule and effective date of changes. (i) The fee schedule is made available on the FDIC's World Wide Web page, found at <http://www.fdic.gov>.

(ii) The fee schedule will be set forth in the "Notice of Federal Deposit Insurance Corporation Records Fees" issued in December of each year or in such "Interim Notice of Federal Deposit Insurance Corporation Records Fees" as may be issued. Copies of such notices may be obtained at no charge from the Office of the Executive Secretary, FOIA/PA Unit, 550 17th Street N.W., Washington, D.C. 20429, and are available on the FDIC's World Wide Web page as noted in paragraph (f)(4)(i) of this section.

(iii) The fees implemented in the December or Interim Notice will be effective 30 days after issuance.

(5) Use of contractors. The FDIC may contract with independent contractors to locate, reproduce, and/or disseminate records; provided, however, that the FDIC has determined that the ultimate cost to the requester will be no greater than it would be if the FDIC performed these



tasks itself. In no case will the FDIC contract out responsibilities which the Freedom of Information Act (FOIA) (5 U.S.C. 552) provides that the FDIC alone may discharge, such as determining the applicability of an exemption or whether to waive or reduce fees.

(g) *Exempt information.* A request for records may be denied if the requested record contains information which falls into one or more of the following categories.<sup>4</sup> If the requested record contains both exempt and nonexempt information, the nonexempt portions which may reasonably be segregated from the exempt portions will be released to the requester. If redaction is necessary, the FDIC will, to the extent technically feasible, indicate the amount of material deleted at the place in the record where such deletion is made unless that indication in and of itself will jeopardize the purpose for the redaction. The categories of exempt records are as follows:

- (1) Records that are specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order;
- (2) Records related solely to the internal personnel rules and practices of the FDIC;
- (3) Records specifically exempted from disclosure by statute, provided that such statute: (i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (4) Trade secrets and commercial or financial information obtained from a person that is privileged or confidential;
- (5) Interagency or intra-agency memoranda or letters that would not be available by law to a private party in litigation with the FDIC;
- (6) Personnel, medical, and similar files (including financial files) the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (7) Records compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records:
  - (i) Could reasonably be expected to interfere with enforcement proceedings;
  - (ii) Would deprive a person of a right to a fair trial or an impartial adjudication;
  - (iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;
  - (iv) Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished records on a confidential basis;
  - (v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or
  - (vi) Could

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<sup>4</sup> Citation omitted

reasonably be expected to endanger the life or physical safety of any individual;

8) Records that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the FDIC or any agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

(h) *Appeals.* (1) Appeals should be addressed to the Office of the Executive Secretary, FDIC, 550 17th Street, NW, Washington, D.C. 20429.

(2) A person whose initial request for records under this section, or whose request for a waiver of fees under paragraph (f)(1)(x) of this section, has been denied, either in part or in whole, has the right to appeal the denial to the FDIC's General Counsel (or designee) within 30 business days after receipt of notification of the denial. Appeals of denials of initial requests or for a waiver of fees must be in writing and include any additional information relevant to consideration of the appeal.

(3) Except in the case of an appeal for expedited treatment under paragraph (d)(3) of this section, the FDIC will notify the appellant in writing within 20 business days after receipt of the appeal and will state:

(i) Whether it is granted or denied in whole or in part;

(ii) The name and title of each person responsible for the denial (if other than the person signing the notification);

(iii) The exemptions relied upon for the denial in the case of initial requests for records; and

(iv) The right to judicial review of the denial under the FOIA.

(4) If a requester is appealing for denial of expedited treatment, the FDIC will notify the appellant within 10 business days after receipt of the appeal of the FDIC's disposition.

(5) Complete payment of any outstanding fee invoice will be required before an appeal is processed.

(i) *Records of another agency.* If a requested record is the property of another federal agency or department, and that agency or department, either in writing or by regulation, expressly retains ownership of such record, upon receipt of a request for the record the FDIC will promptly inform the requester of this ownership and immediately shall forward the request to the proprietary agency or department either for processing in accordance with the latter's regulations or for guidance with respect to disposition.

[Codified to 12 C.F.R. § 309.5] [Section 309.5 amended at 63 Fed. Reg. 16404, April 3, 1998, effective May 4, 1998]

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The following is the FDIC's FOIA fee schedule, with the electronic version available to the public at: <http://www.fdic.gov/publish/efoia/fee.html>.

NOTICE OF FEDERAL DEPOSIT INSURANCE CORPORATION RECORDS

FEES -- FOIA FEE SCHEDULE

Date of Issuance: December 30, 1996

In accordance with 12 C.F.R. 309.5(c), the Federal Deposit Insurance Corporation hereby sets forth the fees to be charged for the production of agency records. These fees will be effective for requests submitted no less than thirty days from the above date of issuance. Persons requesting records from the FDIC shall be charged for the direct costs of search, review and duplication as set forth at 12 C.F.R. 309.5(c)(2), unless such costs are less than \$10.00.

The following hourly labor rates shall apply:

Executive level staff..... \$72.00

Professional level staff..... \$44.00

Clerical level staff..... \$20.00

Personal computer rate..... \$2.00/hour (in addition to hourly labor rates)

The charge for duplication of documents shall be \$0.10 per page

Computer charges:

Floppy disks.....\$1.00 (plus data/labor costs)

Magnetic tape reel/cartridge.....\$10.00 (plus data/labor costs)

Mainframe computer data costs: (plus hourly labor rates, if applicable)

CPU processing .....\$0.33/second

Disk I/O .....\$0.35/1000 transactions

Tape I/O .....\$0.20/1000 transactions

Printing .....\$0.88/1000 lines

Special products:

Certain reports, manuals and other products are offered at set prices by agency components which produce them. Prices may be obtained upon request. The above rates shall be in effect until further notice.

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